

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TENNESSEE
GREENEVILLE DIVISION

ULTIMA SERVICES CORPORATION,)	
)	
Plaintiff,)	
)	
v.)	No. 2:20-cv-00041-DCLC-CRW
)	
U.S. DEPARTMENT OF AGRICULTURE,)	
et al.,)	
)	
Defendants.)	

DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

Defendants United States Department of Agriculture, the Secretary of Agriculture, the United States Small Business Administration, and the Administrator of the United States Small Business Administration ("Defendants"), by and through counsel and pursuant to Rule 56 of the Federal Rules of Civil Procedure, respectfully move this Court for the entry of an Order granting them summary judgment. In support of its Motion, Defendants assert the following:

1. Plaintiff does not have standing to assert its claim, and the Court therefore lacks subject-matter jurisdiction over this action.
2. Plaintiff cannot establish a genuine issue as to any material fact concerning the constitutionality of the 8(a) Business Development Program either on its face or as applied by Defendants to procurements in the administrative and technical support services industry, and Defendants therefore are entitled to judgment as a matter of law.

In support of this motion, Defendants rely upon the Memorandum of Law and Statement of Undisputed Material Facts filed herewith, as well as the following exhibits, attached hereto:

1. Plaintiff's Additional Supplemental Responses to Defendants' First Set of Interrogatories ("Pl. Supp. Resp. First ROGs.") (**Exhibit 1**).
2. Relevant excerpts from the Deposition of Celeste Bennett ("Bennett dep.") (**Exhibit 2**).
3. Relevant excerpts from the Deposition of Heidi Atkinson ("Atkinson dep.") (**Exhibit 3**).
4. NRCS Decision Memorandum ("Decision Memo") (**Exhibit 4**).
5. Relevant excerpts from the Deposition of Amy Stonebraker ("Stonebraker Dep.") (**Exhibit 5**).
6. Declaration of Sheryl Welch ("Welch Decl.") (**Exhibit 6**).
7. Declaration of Amy Stonebraker ("Stonebraker Decl.") (**Exhibit 7**).
8. Plaintiff's Responses to Defendants' Third Set of Requests for Admission ("Pl. Resp. Third RFAs") (**Exhibit 8**).
9. Ultima SAM.gov Representations and Certifications ("SAM.gov Reps and Certs") (**Exhibit 9**).
10. U.S. Department of Justice, *The Compelling Interest to Remedy the Effects of Discrimination in Federal Contracting: A Survey of Recent Evidence*, 87 Fed. Reg. 4955 (January 2022) ("DOJ Report") (**Exhibit 10**).
11. Report of Defendant's Expert Jon Wainwright ("Wainwright Report") (**Exhibit 11**).
12. U.S. Department of Commerce, Minority Business Development Agency, *Contracting Barriers and Factors Affecting Minority Business Enterprises: A Review of Existing Disparity Studies* (December 2016) ("2016 MBDA Report") (**Exhibit 12**).
13. Expert Report of Daniel Chow ("Chow Report") (**Exhibit 13**).
14. List of disparity studies with hyperlinks to studies ("Disparity Studies") (**Exhibit 14**).
15. Relevant excerpts from the Deposition of Daniel Chow ("Chow dep.") (**Exhibit 15**).
16. Plaintiff's Requests for Production ("Pl. RFPs") (**Exhibit 16**).
17. Relevant excerpts from the Deposition of John Klein ("Klein dep.") (**Exhibit 17**).

18. SBA Defendants' Responses to Plaintiff's Second Set of Interrogatories (SBA Resp. Second ROGs.) (**Exhibit 18**).
19. SBA Georgia District Office Adverse Impact Determination ("Adverse Impact Determination") (**Exhibit 19**).
20. Relevant excerpts from the Deposition of Terri Denison ("Denison dep.") (**Exhibit 20**).
21. Declaration of Samuel Powers ("Powers decl.") (**Exhibit 21**).
22. Total Funding Agency Dollars (**Exhibit 22**).
23. Plaintiff's Objections and Responses to Defendants' First Requests for Production of Documents ("Pl. Resp. First RFPs") (**Exhibit 23**).
24. USDA NAICS Spending (**Exhibit 24**).

Dated: June 21, 2022

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on June 21, 2022, I electronically filed the above document and with the Clerk of the Court using the ECF System, which will send notification of such filing to all counsel of record.

/s/ Juliet E. Gray
Juliet E. Gray
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